Honouring Commitments: An Investigation of Fraser Health Authority's Transfer of Seniors from Temporarily Funded Residential Care Beds

Ombudsperson

B.C.'s Independent Voice For Fairness

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Introduction

In August 2009, the Office of the Ombudsperson received complaints from three families whose loved ones were being required to transfer from temporarily funded beds in a residential care facility in Surrey.

In addition to the normal concerns that might be involved in moving seniors ranging in age from 85 to 96, the family members who came to us were very surprised that this was happening at all as they had each received a letter from the Fraser Health Authority a year earlier that said their family members would not have to move as long as the facility they were residing in was licensed and continuing to operate.

We believed that this was an important issue to look at, not only because there were 77 seniors who had originally received the letter, but also because a commitment voluntarily undertaken by a public authority is something that should be taken seriously and that people should be able to rely upon.

Our investigation did not show that was the case. It showed instead that Fraser Health Authority did not treat the seniors who it had made commitments to any differently than those it had not made commitments to when it came to requiring them to move from temporarily funded beds. It also showed that while front-line staff were supportive in these stressful circumstances they had limited flexibility and understandably felt they had to work within the health authority's already determined schedule.

While investigating these complaints we also had the opportunity to look more broadly at two other issues. We found that seniors in temporarily funded residential care beds in Fraser Health were not told that was the case or given an explanation about the effect of that funding status on when and how often they might have to move.

In addition we discovered that on occasion Fraser Health had discouraged operators of facilities who were looking at closing their facilities with less than 12 months notice from asking for the required exemption from a medical health officer. This meant that affected seniors and families were denied the opportunity to appeal such an exemption to an independent statutory tribunal.

I am satisfied with Fraser Health's response to the recommendations made in this report for improving their planning, transfer and facility closure processes and I am pleased it has agreed to apologize to those seniors and their families to whom it made a commitment in 2008 for not taking that commitment as seriously as it should have done.

I would also like to thank the complainants who came to our office with their concerns in this case. It is through the initiative of such individuals that our office becomes aware of situations where action needs to be taken to improve program delivery and ensure that fair and reasonable administrative processes are in place.

Kim S. Carter
Ombudsperson
Province of British Columbia

Investigation

Background

Beginning in 2004, the Fraser Health Authority (FHA) purchased a number of temporarily funded residential care beds in various facilities, including Newton Regency, pending the construction of new permanently funded beds over the following few years.

The Newton Regency Care Home was a privately run residential care facility in Surrey. It was licensed between 1991 and November 2010 with capacity for 136 residents.

In 2008, residents became concerned that FHA might withdraw funding for temporary beds at Newton Regency and they would have to move. In a letter dated May 22, 2008, FHA addressed residents' concerns. It notified 77 residents at Newton Regency that while the funding for their beds was temporary, the residents could remain in funded beds at Newton Regency until they wished and that the beds would be closed by attrition. FHA explained in that letter:

> "Second, as stated above, temporary beds were opened while waiting for new facilities to be constructed. Temporary beds are being funded with the dollars committed to the new facilities that are now starting to open. As each new facility opens, temporary beds in the same community will be closed.
>
> We believe the least disruptive way is by closing beds through attrition at Newton Regency. By attrition we mean: when a bed is vacated by a resident, Fraser Health will not fill it again. While the operator of Newton Regency is able to maintain financial viability and able to provide safe and appropriate resident care, Fraser Health is committed to supporting any resident in a permanent or temporary bed at Newton Regency to remain at Newton Regency if that is the resident/family's wish."

This issue was also raised in the Legislative Assembly on May 23, 2008 when the then-Minister of Health read excerpts from the May 22, 2008 letter and explained that if residents wished to move to another facility they could, but that the residents would not be obliged to move.

At the beginning of July 2009, FHA decided to close the temporarily funded beds at a number of facilities, including Newton Regency. At that time there were 331 individuals in temporarily funded beds in facilities throughout Fraser Health. The majority of these individuals were not informed by the FHA of the temporary nature of the funding for their beds.

In its planning during this timeframe, FHA identified that its target for 2009/2010 was to close 179 temporary beds, with the majority in the Surrey/South Surrey communities where 285 new permanently funded beds were scheduled to open over the following few months. FHA planned to close the remaining temporarily funded beds over time, with plans to close all of them by March 31, 2012.

Between May 2008, when the 77 residents then in temporarily funded beds at Newton Regency were notified that their beds would be closed by attrition, and July 2009, 38 of those 77 residents had vacated their temporarily funded beds. Of the 38, 21 had transferred to another facility, four had moved back to the community, 12 had passed away, and one had transferred to a permanently funded bed at Newton Regency. The other 39 residents who had received the letter of commitment from FHA remained in temporarily funded beds at Newton Regency at the beginning of July 2009, with one awaiting transfer to a preferred facility.

By letter dated August 12, 2009, FHA contacted the remaining residents in temporarily funded beds at Newton Regency who had received the May 22, 2008 letter to advise them that:

> "[T]he plan in 2008 was to decrease the temporary beds at Newton Regency by attrition; however, due to the significant budget difficulties Fraser Health is undergoing, we can no longer. As new Fraser Health permanent complex care beds open, residents in temporary beds at Newton Regency will be required to relocate."

Issues Investigated

Three family members of residents directly affected by the decisions of FHA regarding Newton Regency made complaints to our office about the decision that FHA made in early July 2009 and communicated to the complainants in August 2009.

After considering the information provided by the complainants in August 2009, we decided to investigate the following five issues:

1. Whether the August 2009 decision to move residents was fair and reasonable given the earlier written assurance that beds would close by attrition;
2. Whether the notice that was provided to residents and their families, of the closure of the beds and the need to relocate or pay the full cost of a private bed, was adequate;
3. Whether FHA adequately considered the risks to the health and safety of the individuals to be moved;
4. Whether the planning processes followed by FHA was adequate; and
5. Whether, in the case of Newton Regency and another residential care facility, FHA required compliance with the requirement in the *Residential Care Regulation* for licensees to provide notice of a decision to suspend the operation of a community care facility.

We provided notice to FHA of our investigation into the administrative fairness of these processes on September 4, 2009.

Complaints Received

The following section provides more detail about the three complaints received by our office in August 2009. The complainants believed that FHA's decision was unfair given its earlier commitment, and that FHA failed to adequately consider the risks associated with moving frail seniors. Names have been changed to protect confidentiality.

Mary's Story

Mary was 96 years old and had advanced dementia. She was in a wheelchair and required help eating. Mary's son did not want his mother to be moved and was concerned about the risk to his mother from relocating her.

However, given the limited options made available to him and the short time frame within which he was required to make the decision, Mary's son decided on one of the choices he had been given and Mary was transferred there before the end of September 2009.

Investigation

Eleanor's story

Eleanor was 85 years old and as a result of a stroke did not walk by herself and required a wheelchair. Eleanor's husband had been told that his wife might be transferred to the facility he had chosen which was close to where he lived but that if no bed came available there by the end of September 2009, she would have to go to another facility. Eleanor's husband did not want his wife to be moved twice. He was also concerned that the room he was shown at the other facility was much smaller than the room his wife then occupied at Newton Regency, and it did not have room for her wheelchair or a lift. Ultimately, Eleanor was relocated to the facility her husband had selected in early October 2009.

Helen's story

Helen was 91 years old and had been at Newton Regency for four years. She was visually impaired, very frail, and could no longer walk due to a stroke. Two people were needed to transfer her from bed to her chair.

Helen had a wheelchair at Newton Regency and was told that she was not allowed to bring it with her on a move. Helen's daughter understood she would have to purchase a wheelchair for her mother.

Given the limited choices and short time frame allowed for making a decision, Helen's daughter chose a facility for her mother to transfer to that was similar in layout to Newton Regency and close enough to her home that she could continue to visit with her mother and see her to bed each night.

Eventually, after our office contacted FHA directly and asked it if it would consider giving individual consideration to Helen's circumstances, FHA made a permanently funded bed at Newton Regency available to Helen in October 2009.

Investigation Issues 1 and 2

This investigation considered the fairness and reasonableness of FHA's decision to close the temporarily funded beds at Newton Regency in light of its earlier written commitment to close those beds only by attrition. We also considered whether FHA provided adequate notice to residents and families of their need to relocate after its decision to close the temporary beds. Our conclusions are based on the information that follows.

By letter dated May 22, 2008, FHA committed to residents and families at Newton Regency that "while the operator of Newton Regency is able to maintain financial viability and able to provide safe and appropriate resident care, Fraser Health is committed to supporting any resident in a permanent or temporary bed at Newton Regency to remain at Newton Regency if that is the resident/family's wish."

In May 2008, FHA knew how many new residential care beds it expected to open that year and in the following two years. The only change between May 2008 and June 2009 in relation to these new beds was the timing of the openings, as some of the sites were affected by construction delays.

As of June 2009, there were 331 temporary residential care beds in FHA. Most clients in those beds were unaware of the temporary nature of their placement. As the new facilities opened, FHA planned to close temporarily funded beds in the same communities.

In June 2009, the residential care and assisted living program in FHA was required to develop and implement budget mitigation strategies in response to budget challenges.

Investigation

As one of its budget mitigation strategies, FHA considered closing temporarily funded residential care beds. The decision to close temporary beds at specific facilities, according to FHA, was to be based on a number of factors and the following principles:

- maintaining core services
- least impact to residents, family and staff
- least impact to access of services

In June 2009, FHA identified a number of facilities for reduction or closure of temporary beds. For each facility, FHA created a chart that assigned a high or low public/media/political risk rating to their proposed actions.

FHA's target closure for 2009/2010 was 179 temporary beds, the majority of which were in the Surrey/South Surrey communities where 285 new beds were scheduled to open up in the summer of 2009.

FHA planned to close the remaining temporarily funded beds over time, with all beds being closed by March 31, 2012. Some of these would close through attrition only.

In accordance with its earlier plans, FHA was opening residential care and assisted living beds in the following communities in 2009:

- Surrey (106 residential care beds, scheduled to open June 2009)
- South Surrey/White Rock (90 residential care beds and 36 assisted living, scheduled to open September 2009)
- Maple Ridge (rebuild 38 residential care beds, scheduled to open in July 2009)
- Langley (89 residential care beds scheduled to open in September 2009)

In early July 2009, FHA considered the attrition process at Newton Regency to be "very slow resulting in minimal closure of temporary beds within past year." FHA estimated that at the current attrition rate it would take 5-7 years to close all the temporarily funded beds at Newton Regency. FHA did not, however, consider that 38 of the 77 beds (48%) had been vacated by attrition, as defined in FHA's May 2008 letter. Of the 38 beds that had been vacated, 21 residents had transferred to another facility, four had moved back to the community, 12 had passed away, and one had transferred to a permanently funded bed.

FHA decided on July 10, 2009 that it would close the temporarily funded beds at Newton Regency on September 30, 2009 but continue to fund the 11 permanently funded beds.

FHA identified six facilities as requiring more detailed attention because of "[the] large number of residents that will need to be transferred, resistance from operators and/or residents and family members, or because there are no new beds in that community."

The closure of temporary beds at Newton Regency was identified by FHA as high risk in part because "prior commitment was made by FHA to allow for closure by natural attrition however this process is very slow resulting in minimal closure of temp beds within past year."

FHA acknowledged that closing the temporarily funded beds at Newton Regency would leave the facility with only 11 permanently funded beds and could result in Newton Regency becoming financially non-viable. If this were to happen, the operator would need to provide notice to FHA of the closure of the facility and FHA would have to then transfer the 11 permanently funded residents.

Investigation

On August 12, 2009, FHA sent a letter to the remaining residents at Newton Regency who had received the May 22, 2008 letter to inform them of the decision that the beds they were still occupying would no longer be closed by attrition. The reason provided for bed closure was that because of "the significant budget difficulties Fraser Health is undergoing, we can no longer decrease the temporary beds at Newton Regency by attrition."

All residents in temporary beds at Newton Regency were asked to select a bed at one of three new facilities. FHA stated that a decision had to be made by the residents and that any move had to be completed by September 30, 2009. FHA indicated that residents and their families had a choice of the following options:

a) Choose one of the three new facilities identified as having available beds and move in once those beds are open

b) Choose another facility and consult with Fraser Health residential staff to confirm that choice and every effort would be made to move the resident to the preferred facility; however, this may not be possible for all residents, as it depended on available vacancies

c) Move back into the community with home supports that Fraser Health would partly provide

d) Choose a private bed in any facility. This required residents to be responsible for the full costs of a private bed

The August 12, 2009 Questions & Answers document produced by FHA to address questions that it expected would be asked as a result of its decision states that "Fraser Health will take the steps needed to relocate residents almost immediately, depending on the specific needs of the resident, and their readiness to move to a permanent location." The same document indicates that the "Residential Care Team will work with residents and families to assist in the selection of an alternate facility as quickly as possible."

FHA guaranteed placement for residents in one of the three new facilities which were the following distances from Newton Regency:

- 1.9 km from Newton Regency
- 13.2 km from Newton Regency
- 17.3 km from Newton Regency

If a resident's preferred facility was not one of the new facilities, FHA informed people that they might have to first move to a new facility and then await transfer to their preferred facility when a space became available.

FHA informed residents that their subsidy at Newton Regency would end on October 1, 2009 if they chose not to leave Newton Regency. This meant that if they were still at Newton Regency on October 1, 2009, they would have to pay the full cost of private care.

FHA transition team placed phone calls on August 13 and 14, 2009 to residents and family members to provide information about the closure. FHA made two transition team members available to meet with residents on August 18, 19, 20 and 21.

Transition plans were completed by FHA for residents who were to be transferred and whose families were willing to participate in the transition planning process. A transition plan was completed for Eleanor, but not for Mary or Helen.

Investigation

Analysis Issue #1 — Written Commitment

By making a commitment, in writing, on May 22, 2008, to close the temporary beds at Newton Regency by attrition, FHA created a reasonable expectation that people would have the choice of remaining at Newton Regency, as long as Newton Regency was able to provide safe and appropriate care and continued to be financially viable. This was echoed in the Legislative Assembly on May 23, 2008, so it would be reasonable to assume that FHA would have conducted the necessary analysis to assure itself that it could make the commitment. This may have included an evaluation of the attrition rate, the number of new permanently funded beds that would become available over the timeframe that the attrition process was expected to occur, and the cost for continuing to fund temporary beds. Inherent in this commitment is that FHA would not cause Newton Regency to "no longer be financially viable" by its own actions.

Neither of the conditions identified in the May 2008 letter (Newton Regency not being able to provide safe and appropriate care and Newton Regency not being financially viable) were cited for FHA's eventual decision to close the temporary beds at Newton Regency in a planned manner. Instead, FHA cited budgetary constraints for its decision to close the temporary beds at Newton Regency. FHA, however, continued to fund temporary beds in other facilities, and it continued to close beds in other facilities by attrition. FHA did this even though it had not made any previous commitments to do so.

In the context of procedural fairness, the doctrine of legitimate expectations means that a person will be entitled to have certain procedures applied to a process if the person could reasonably expect those procedures to be used. In some cases, more extensive procedural rights may be called for if the legitimate expectation pertains to the result of the process. The Supreme Court of Canada has held that it will generally be unfair for decision-makers to contravene "representations as to procedure or to backtrack on substantive promises without according significant procedural rights."[1] The Supreme Court of Canada has also held the doctrine applies in situations in which:

> "the conduct of a Minister or other public authority in the exercise of a discretionary power including established practices, conduct or representations that can be characterized as clear, unambiguous and unqualified, that has induced in the complainants a reasonable expectation that they will retain a benefit or be consulted before a contrary decision is taken."[2]

That is the standard that we have applied in this situation.

The only documented consideration of the written commitment made to Newton Regency residents is contained in an executive briefing note dated June 25, 2009. The briefing indicates that FHA assigned a high public/media/political risk to the closure and provided the following explanation:

> Prior commitment was made by FH to allow closure by natural attrition however this process is very slow resulting in minimal closure of temp beds within past year. Current attrition rate will take 5-7 years to completely close these beds. Beds are available to accommodate these residents in a new building opening in July.

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[1] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 26.

[2] *C.U.P.E. v. Ontario (Minister of Labour)*, *("The Retired Judges Case")*, [2003] 1.S.C.R. 539 at para. 131.

Investigation

There is no indication that FHA considered reasonable alternatives that would allow it to fulfill its commitment; that it treated those residents and families to whom it had given its commitment any differently than any other residents in other temporarily funded beds; or that it provided these residents and their families with any avenue of recourse or information about how to dispute the decision as it affected them. This is despite the fact that a number of these residents and family members clearly indicated that they were upset and concerned about the decision.

In making a written commitment to residents to close beds by attrition, FHA created a reasonable expectation that the beds would close by attrition as long as the facility was financially viable and able to provide safe, quality care. FHA should have respected the commitment it had made voluntarily, in good faith, and presumably after an analysis of whether it was in a position to make it.

If there had been an unexpected and significant change in circumstances, FHA should have considered its written commitment very seriously and carefully evaluated all reasonable options that would have allowed it to respect that commitment. If after analyzing these options, FHA concluded that it was not possible to honour its written commitment, FHA should have consulted in an open and reasonable manner with the individuals affected to minimize the adverse effects on them and provide them with a process to dispute the decision as it affected them.

There are a number of options that were not explored in this situation, including choosing to close temporarily funded beds at other facilities where FHA continued to provide funding and where no commitment had been made.

The Ombudsperson finds that

1. FHA acted unfairly in deciding to close the temporary funded beds at Newton Regency without giving adequate weight to its prior written commitment to residents to close the beds by attrition.

The Ombudsperson recommends that

1.1. FHA apologize to the residents and families at Newton Regency affected by its decision; explain to them the process it followed in deciding to close the temporary funded beds they occupied at Newton Regency; and set out what steps it will take to ensure that it takes such commitments seriously, to consider all reasonable options to allow it to respect its commitments, and if it concludes that is not possible to provide adequate procedural safeguards to individuals affected by its actions.

1.2. FHA develop a clear and transparent administrative procedure to use in decision making to ensure that it reviews its commitments (not including those made under contract) and considers how to follow them. If FHA decides that it is not possible to follow a commitment, FHA consult with people affected and ensure they can dispute the decision.

Analysis Issue #2 — Adequacy of Notice

Although the decision to discontinue funding temporary beds at Newton Regency was made in early July 2009, residents and families were not informed of this decision until August 12, 2009. Residents and families were then offered an opportunity to meet with a transition team the following week. They were also encouraged to make their decision as quickly as possible and told that they would have to move by the end of September 2009, or else pay the full cost of their bed at Newton Regency. Residents were provided with a maximum of 49 days notice to complete a move.

In this situation, residents were encouraged to choose to move to one of the three new facilities and were guaranteed a placement in one of the three new facilities providing they selected one prior to the end of September. Residents who identified a facility other than the three new facilities were not provided with an opportunity to remain at Newton Regency until their preferred facility became available even when permanent beds were still being funded. Rather, they were asked to identify one of the three new facilities and told they would have to transfer to a new facility while awaiting placement in their preferred facility. This is despite the fact that one of the guiding principles identified by FHA in its transition plan was to minimize resident moves. Residents who chose to stay at Newton Regency beyond the end of September would lose the FHA subsidy and would have to pay the entire private-pay cost for the bed.

Eleanor's husband, for example, identified a preferred facility for his wife, which was not one of the three new options. Eleanor's husband is elderly and indicated that the new options were further away and would make it difficult for him to be able to visit his wife. He did not wish for his wife to have to move twice, and wanted her to remain in Newton Regency until space was available at their preferred facility. He was told that his wife could remain at Newton Regency but that after September 30th, 2009, they would have to pay the full cost of her bed while awaiting an opening at her preferred facility. This left him with three options: placing his wife in a facility further away from his residence which would make it more difficult for him to visit her, moving her twice, or paying the full cost of her bed for an unknown amount of time while waiting for an opening at the preferred facility. None of these options met the needs and wishes of Eleanor or her husband.

Eleanor's husband was not confident that a bed would become available at the preferred facility given FHA's short timeframe. Indeed, the 49-day notice caused him significant stress that would have been substantially lessened if the FHA had provided a longer notice time period.

Fortunately for Eleanor and her husband, a place became available at their preferred facility and Eleanor was transferred from Newton Regency directly to that facility on October 2, 2009 (51 days after notice provided).

In terms of what would be considered to be reasonable notice, we considered that ordinary tenants are entitled to two months written notice of the end of a tenancy. Licensees of residential care facilities are required to provide at least one year notice of a decision to cease or suspend the operation of a community care facility and are required to provide written notice at least 120 days before reducing, expanding or substantially changing the nature of the accommodation or services provided at a community care facility. A minimum time frame for adequate protection for residents and reasonable flexibility for the health authority is 60 days.

The Ombudsperson finds that

2. FHA failed to provide adequate or reasonable notice to the residents of Newton Regency of its intention to close the temporary beds given the requirement FHA imposed to complete moves by September 30, 2009 or pay the full cost of a private bed at Newton Regency.

The Ombudsperson recommends that

2.1. When FHA decides to cease funding beds for reasons other than the health and safety of the residents and as a result individuals are required to move to another facility to continue receiving FHA funding, FHA provide at least 60 days notice to residents and families and make it clear that there is flexibility on final move dates to minimize moves and facilitate transfer to a facility of choice.

Knowledge of Temporary Nature of Placement

In addition, during our investigation, we learned that many of the more than 300 residents in temporary beds in the FHA were unaware of the temporary nature of their placements and the consequences that flowed from that difference. This is because they were not informed by FHA that their placements were temporary at the time that they accepted them.

The Ombudsperson finds that

2.1. FHA did not provide adequate information to people to allow them to make an informed decision to accept or reject a placement in a temporary funded bed.

The Ombudsperson recommends that

2.2. FHA inform people whether an offered placement is temporary or permanent and explain the difference between them. FHA develop a policy on offering temporary placements which acknowledge that if a temporary placement is declined because an individual or family member have concerns that the temporary status of the bed may result in extra risk due to a reasonable potential for additional moves that FHA will consider the placement to be not appropriate. The policy also specify that declining an offer in these circumstances would not change a person's position on the wait list for a residential care placement.

Investigation

Investigation Issues 3 and 4

This investigation considered whether FHA had adequate procedures in place, which it followed, to consider the risks to the health and safety of the residents at Newton Regency from a move. It also considered whether the planning process that FHA followed in making the commitment to close temporarily funded beds at Newton Regency by attrition and then deciding to close them in a planned manner instead and then to close these same beds was adequate.

Our conclusions are based on the following information.

In 2008 FHA made a commitment to residents and families to reduce temporary beds at Newton Regency through attrition.

FHA has no documentation from 2008 that sets out its planning process before making this commitment.

FHA faced unexpected financial challenges in 2009 and had to make budget cuts.

The process for developing budget reduction strategies was conducted through conversation and discussions at the senior level in the health authority. Briefing notes were developed by FHA staff for senior management.

The general principles for developing mitigation strategies were:

- Ensuring core services were not impacted
- Ensuring impact of clients/residents/patients was minimized wherever possible
- Least impact to access of service
- Non-essential costs were to be a particular focus (e.g., paper costs, travel, conferences, use of consultants, etc.)

Final decisions were made by the Vice President, Chief Financial Officer, Chief Executive Officer and Board of Fraser Health.

The residential care and assisted living program was required to develop and implement budget mitigation strategies, but it was not provided with specific instruction on the amount of money the program had to save.

In June 2009, FHA identified a number of facilities for closure of their temporary capacity. For each facility, FHA assigned a high or low public/media/political risk rating. FHA also identified a timeline for completion or closure. Newton Regency was identified as high risk and had a closing date of September 30, 2009. The risk rating did not include an assessment of risk to resident health and safety. Rather, it included:

> "the financial risk category … was assessed based on the ability for the Fraser Health Authority to accomplish the temporary bed reductions … or in other words, if the temporary bed reductions (and associated cost savings) could not be met with the identified strategies, the risk in the financial category would be high."

The decision to close temporarily funded beds at specific sites in the Fraser Health Authority for budget mitigation was to be based on an assessment of many factors including:

- clinical capacity to provide complex care

- condition and age of the built environment
- financial viability of the organization
- impact on residents and families
- number of funded beds at each site
- options to relocate to new builds within existing communities
- ratio of temporary to funded beds
- service diversity at each site

The budget mitigation discussions resulted in the development of two plans with mitigation strategies identified by the residential care and assisted living program.

Closure of the temporary capacity at Newton Regency was included in the first plan representing the time period from July 2009 to March 2010.

It was solely the financial challenges facing FHA in 2009 that "forced FHA to make a difficult decision, and to inform residents and families of the need to close the temporary beds at Newton Regency within a specified timeframe."

FHA explained its rationale for closing the temporarily funded beds at Newton Regency instead of at other facilities:

> "The decision to withdraw the funding for the temporary bed capacity at the Newton Regency site in a more focused approach (rather than through attrition) was a complex decision, but included the rate of attrition, location of the bed (which community beds served), availability of new bed capacity to continue to meet the needs of the community, impact on the acute care sector, and the rate of attrition at other locations. Further, Fraser Health Authority also considered the efficacy of purchasing only a small number of beds at any one site."

FHA advised that Newton Regency was the last facility to be included in the budget mitigation strategy.

FHA identified the following as the objectives of its relocation plan for Newton Regency:

- to effectively coordinate the closing of the temporary beds with minimal disruption to residents and family members
- to support and relocate residents to another appropriate facility within the required time frame

Among the guiding principles identified by FHA for dealing with the consequences of the decision to cease funding temporary beds at Newton Regency was that efforts would be made to minimize the number of resident moves.

FHA's transition team placed phone calls to families affected by the closure on August 13 and 14, 2009. FHA made two transition team members available to meet with residents and families on August 18, 19, 20 and 21.

During meetings with residents and families, needs and preferences were discussed but only within the confines of the decision already made by FHA about:

- what facilities were available

- how quickly moves were to be completed
- what costs were associated with the move
- the requirement for individuals who did not move by September 30, 2009 to pay the full private-pay cost for a bed at Newton Regency

It was following FHA's decision to close the temporarily funded beds at Newton Regency that FHA staff completed transition plans for residents who would be moving and whose families had participated in the transition planning process. These plans included an assessment of where and when a resident should be relocated, again within the confines of the decision that had already been made by FHA.

As of March 2010, there were still temporarily funded beds open in FHA and it planned to continue with some temporary funding until March 2012.

Analysis Issue #3 — Considering Risks to Health and Safety

FHA indicated that one of the factors it considered in deciding to close the temporarily funded beds at specific sites such as Newton Regency was the impact on residents and families. We asked for information that showed how this was assessed before the decision to close the temporarily funded beds at Newton Regency was made, but FHA was unable to provide us with any information on how it considered that factor. It is therefore not possible to assess whether and how FHA's process evaluated the impact of the decision to cease funding temporarily funded beds on the residents at Newton Regency and their families. We were, however, provided information on how public/media/political risks were assessed for closings of temporarily funded beds at specific facilities.

It may be necessary for FHA to make decisions for solely financial reasons from time to time. Preferably, the consequences of those decisions on each affected individual would be assessed before the decision is made. In some situations this may not be possible. If that is not possible then, at a minimum, reasonable steps need to be taken to minimize any risks to and adverse consequences for affected individuals that flow from such decisions.

In this situation, if it was not possible for FHA to consider the risks to every individual in a temporarily funded bed prior to deciding to cease funding the temporary beds, then FHA still had an obligation to take all reasonable steps to minimize the risks associated with the resulting moves and any adverse effects on individuals, particularly as it is recognized that there are inherent risks in moving frail elderly people.

At the beginning of July 2009, FHA decided to close the temporary beds at Newton Regency. FHA provided notice to residents and families in the middle of August, and residents were required to relocate by the end of September, 49 days later.

After deciding that it needed to close temporarily funded beds at Newton Regency, FHA staff implemented transition planning for the relocation of residents.

In developing relocation plans for residents, FHA encouraged each resident to select one of the three new facilities and guaranteed a placement in one of those facilities. If a resident selected a facility other than one of the three new facilities and it was full, they were informed that they would have to move to one of the new facilities anyway and then await transfer to their facility of choice when a space became available.

Investigation

We heard from family members who told us that they felt pressure to accept a placement at one of three new facilities because of the short time within which a decision had to be made and a move completed. They also felt pressure because it was made clear by FHA that there was no guarantee that placement would be available in a preferred facility.

Ombudsperson staff reviewed the case management files for the 39 Newton Regency residents who had received the letter of commitment from FHA and remained in temporarily funded beds at Newton Regency at the beginning of July 2009. In reviewing the files, we considered whether there was evidence that the plan to decommission the temporary beds at Newton Regency was sufficiently flexible to accommodate the needs of residents and their families.

Residents and families were told that they were guaranteed beds in one of three new facilities. If they wanted to move to a different facility and a bed was not available by the end of September 2009, they would have to transfer into one of the three new facilities until a vacancy came up. These were the only options communicated to residents in temporarily funded beds, apart from pursuing private pay options, including private pay beds at Newton Regency. Many residents and families were upset and strongly opposed the move, but had no other option than to cooperate.

Although the plan could have required some residents to move twice in order to be placed in their preferred facility, there is no evidence that any of the residents in temporarily funded beds had to move more than once.

We concluded that there was insufficient flexibility built into the plan. However, despite the lack of flexibility in the plan, it was evident from the file review that the case managers assigned to the transition team were as accommodating as possible within the confines of the FHA's plan.

Some examples showing flexibility by the transition team in placing residents:

- One resident's daughter could not move her until after September 24th, and was allowed to move after that date, rather than as soon as a bed was available.
- Another resident required bariatric care and her son was concerned about finding an appropriate facility. She was able to remain at Newton Regency until February 22, 2010, when a funded bariatric bed became vacant.

In addition, we found that there was a considerable amount of confusion between FHA, Newton Regency, the transition team, and the residents and families. When residents were initially informed in Spring 2008 that beds would be closed by attrition, case managers worked to assure residents that they did not have to move. When residents were informed of the new plan in August 2009, some were told that their seniority at Newton Regency would affect their ability to be placed in one of the new facilities, though this misinformation was quickly corrected. Many clients were informed that there was an additional $3 a day charge at one of the new facilities. This was later clarified as incorrect by FHA.

It was FHA's position that it took every possible step to mitigate adverse impacts for each individual affected. As evidence, FHA used the examples of Eleanor and Helen. FHA explained that for Eleanor it extended funding at Newton Regency for three days because FHA was aware of a vacancy at Eleanor's preferred facility. With respect to Helen, FHA noted that it offered her a placement in a permanently funded bed at Newton Regency.

FHA's notes, however, indicate that Eleanor's husband had four conversations with members of the transition team. In each, Eleanor's husband was clear that he wanted his wife to transfer to the facility he had identified and that he was concerned about the possibility of her transferring twice. He specifically requested that FHA extend his wife's bed at Newton Regency until a vacancy became available at his chosen facility. According to FHA's notes, he was consistently advised that the:

- subsidy would end September 30th and that if he chose not to move his wife that he would be responsible for paying full costs and
- FHA would not extend his wife's bed at Newton Regency until a vacancy at his chosen facility became available

With respect to Helen, although Helen's daughter had clearly told FHA that her preference was for her mother to remain at Newton Regency, Helen was only transferred to a permanent bed at Newton Regency after our office's involvement.

Implementation of such a transfer plan must include the provision of sufficient time to allow for consultation with and consideration of the impact of a move on each individual resident as well as sufficient flexibility in the application of the plan so as to minimize adverse affects.

Our conclusion is that while the decision to cease funding the temporary beds at Newton Regency by end of September 2009 was administratively convenient and cost effective FHA did not allow adequate flexibility in transition planning. FHA transition planning staff were able to consider risks, but only within the timeframe imposed for closing the beds at Newton Regency and transferring the residents. There exists an inherent contradiction between this timeframe constraint and the necessary flexibility to mitigate the effects on residents by accommodating residents' individual circumstances. Despite the lack of flexibility in the plan, the case managers assigned to the transition team were as accommodating as possible.

The Ombudsperson finds that

3. FHA's transition process was not flexible enough to allow for adequate consideration of individual circumstances. While FHA considered risks, it only did so within self-imposed constraints such as the requirement to close temporary funded beds at Newton Regency and relocate residents within a specified time frame.

The Ombudsperson recommends that

3. FHA's transition planning processes for moving residents to new facilities include sufficient flexibility to take individual circumstances into account and to minimize adverse effects from the transition.

   Also see Recommendation 2.1

Investigation

Analysis Issue #4 — Planning Processes

We investigated whether the process followed by FHA in planning for the closure of the temporary capacity at Newton Regency was adequate. In the course of our investigation, we reviewed information and documentation provided by FHA in order to understand what options were considered by FHA and what consideration was given to the May 2008 commitment.

FHA told our office that it considered the commitment it made to residents at Newton Regency prior to making the decision to close the temporarily funded beds. Indeed, information provided by FHA shows FHA considered the closure of the temporary beds at Newton Regency as high risk, in part because of the earlier commitment it made to residents to close the beds by attrition. However, nothing indicated that FHA had considered that it had an obligation flowing from the commitment it made and that it took all reasonable steps to fulfill that obligation.

FHA also informed our office that Newton Regency was the last facility to be factored into the budget mitigation strategy. Documentation provided by FHA confirms that FHA considered a variety of options and budget mitigation strategies. These were considered in two phases with the first phase of proposals around June 2009 and the second phase of proposals around September 2009.

Despite being informed by FHA that Newton Regency was the last facility to be factored into the budget mitigation strategy, our conclusion is that when FHA decided in July 2009 to close the temporary beds at Newton Regency by September 30, 2009, it also decided that temporarily funded beds at other facilities would be closed only by attrition, even after September 30, 2009.

We requested documentation from FHA from May 2008 that demonstrated that it had calculated the financial costs of the commitment it made to residents. While FHA was able to provide us with a breakdown of the estimated costs of the commitment, it was not able to provide documentation demonstrating that it had calculated the costs of its commitment in May 2008. Our conclusion is that FHA had not, for planning or other purposes, calculated the cost of the commitment it made in May 2008 before making its commitment to residents in temporarily funded beds.

The Ombudsperson finds that

4. FHA did not plan adequately before making its May 2008 commitment to residents in temporary funded beds.

4.1. FHA did not give adequate consideration to the commitment it made to residents and families at Newton Regency during its planning process.

The Ombudsperson recommends that

4. FHA always plan for the resources required at the time it makes a commitment.

   Also see Recommendation 1.2

Investigation

Issue 5 — Compliance with Notice Requirements

In the course of our investigation into the complaints we received about Newton Regency, the information we gathered and reviewed led us to consider whether FHA had appropriately required facilities to comply with the notice requirements in the *Residential Care Regulation*.

We considered the information provided by FHA that follows.

Another Licensed Facility

Notice was provided by the licensee to the medical health officer (MHO) on June 30, 2009. The facility closed on September 22, 2009.

In the summer of 2009, FHA recommended to the licensee that it not seek an exemption from the requirement to provide notice of closure. FHA explained:

> "In the case of [facility], and as alluded to in the question in the Briefing Note, is the advantage/disadvantage to the provider in applying for the exemption. Specifically, the issue at hand for the [facility] was the very real risk of the site entering receivership, and thereby placing the operations of the site, and the continued care of the residents at significant risk. It was as a result of this risk that Fraser Health Authority recommended that an exemption not be sought, but rather that a focused support be provided to [facility] and the residents and families at the site to ensure that transition plans that met the needs of the residents and families could be developed. This focused support was provided in order to ensure a timely transition to the preferred location for each resident and family."

A September 9, 2009, FHA issues note stated:

> "With [facility] we recommended to them that they not apply for an exemption because a resident or family member could attempt to legally challenge the exemption and tie up the decommissioning process … will we work with Newton Regency to achieve their timelines (November 13 at the latest) or encourage a longer time frame?"

Newton Regency

On August 11, 2009, FHA advised the licensee of Newton Regency that FHA would begin closing temporarily funded beds at Newton Regency. FHA stated that it recognized that this action could make the facility financially non-viable and result in the operator providing notice of closure.

On September 8, 2009, the licensee notified FHA in writing that the facility would be closing permanently by November 13, 2009 at the latest.

A question was raised by FHA staff as to whether FHA would require the licensee to comply with the notice requirements in the *Residential Care Regulation* or seek an exemption.

FHA's residential program, decided on September 8, that "we are going to very quickly (today) try to assist this operator in the same manner and approach we used with [other facility]. No waiver is requested from Licensing at this time … however, the Licensing process will have to be followed, and we will be asking the operator NOT to request a waiver."

The licensee later decided to continue operating the facility.

By letter dated November 2, 2009, Fraser Health provided Newton Regency one year's notice of Fraser Health's decision to terminate its contract for funding the 11 permanent beds at Newton Regency.

Analysis

Section 9 of the *Residential Care Regulation* requires licensees to provide at least one year notice to the MHO of a decision to cease or suspend the operation of a community care facility. The Regulation requires a licensee to provide at least 120 written notice days and receive the written approval from the MHO before reducing, expanding or substantially changing the nature of the accommodation or services provided at a community care facility. Section 4 of the *Residential Care Regulation* provides that a licensee may apply for an exemption under section 16 of the Act by submitting an application to a MHO.

Under section 16 of the *Community Care and Assisted Living Act* an MHO can exempt a licensee from specific requirements of the Act or regulations if he or she is satisfied that there will be no increased risk to the health and safety of persons in care. Decisions of an MHO under section 16 can be appealed to the Community Care and Assisted Living Appeal Board under section 29 of the *Community Care and Assisted Living Act*. An appellant may request that the board stay the decision that is the subject of the appeal, pending the appeal on the merits. Section 29(6) of the Act provides that the board may not stay or suspend a decision unless it is satisfied that a stay would not risk the health and safety of a person in care. On appeal, the board may confirm, reverse or vary a decision, or may send the matter back for reconsideration to the original decision-maker.

FHA is responsible for monitoring and enforcing the *Community Care and Assisted Living Act* and the *Residential Care Regulation*. FHA should have either ensured compliance with the one year notice requirement or ensured that the operator requested an exemption from the requirement. Instead, in the case of another licensed facility, FHA recommended that the licensee not request an exemption from the notice requirement after the licensee provided notice of its intention to close in less than three months. FHA appeared to be concerned that a decision by the MHO could be appealed to the Community Care and Assisted Living Appeal Board and result in delays in closing the facility. FHA explained that it believed a delay in providing an opportunity for the facility to close in a timely manner "increased risk for the site to be able to continue to care for the residents and maintain staff at the site." It appears from the documentation provided, that FHA intended to take the same approach to the impending closure of Newton Regency.

While our investigation demonstrated that FHA may not require facilities to comply with notice requirements, FHA assured us that its licensing officers ensure that licensees are informed of their obligations under section 9 of the *Residential Care Regulation*.

Consequently, Ombudsperson staff asked FHA to provide us with information about all licensed residential care facilities that were closed in FHA between 2004-2010. Specifically, we requested for all closures, the date of closure, the date notice was provided to the MHO and confirmation of whether an exemption was requested. While seven facilities were closed in FHA during this time period, we received complete information for five facilities.

Investigation

	Facility 1	Facility 2	Facility 3	Facility 4	Facility 5
Time from notice to closure	3 weeks	6 ½ months	Less than 3 months	4 ½ months	0 days
Exemption requested?	No	No	No	No	No

In each case, the facility was closed with significantly less than the required years notice to the MHO. In each case, the facilities were closed in less than one year despite not having requested or received an exemption from the MHO. It is clear from the information provided that FHA has not been successful in ensuring compliance with section 9 of the Regulation.

It is our conclusion that FHA acted improperly in not taking steps to enforce compliance with the notice requirements in the Regulation and in recommending that a licensee not apply for an exemption. As a decision of an MHO to issue an exemption is appealable to the Community Care and Assisted Living Appeal Board (CCALAB), FHA effectively takes away the legal right of a person affected by the decision to appeal it to the CCALAB by recommending that a licensee not apply for an exemption.

The Ombudsperson finds that

5. FHA acted improperly in not taking steps to enforce compliance with the notice requirements in the *Residential Care Regulation* and in recommending that a licensee not apply for an exemption. In doing so, FHA abrogated the rights of people who would have been affected by a decision of the MHO to grant an exemption and who could have appealed that decision to the Community Care and Assisted Living Appeal Board.

The Ombudsperson recommends that

5.1. FHA ensure that operators of licensed residential care facilities are informed of their obligations to provide notice to the medical health officer of a decision to cease operating or to substantially change the nature of the operations of a residential care facility.

FHA take any and all actions available to them under the *Community Care and Assisted Living Act* and contract to enforce compliance with the notice requirements in the *Residential Care Regulation*.

5.2. FHA ensure that residents and families are informed of requests for exemptions to the notice requirements.

5.3. FHA ensure that residents and families are informed of exemption decisions, including by verifying that a copy of the decision is posted in a prominent place in the facility, is provided to residents and families, and includes information on how to appeal the decision.

Findings and Recommendations

Written Commitment

F1. FHA acted unfairly in deciding to close the temporary funded beds at Newton Regency without giving adequate weight to its prior written commitment to residents to close the beds by attrition.

R1.1. FHA apologize to the residents and families at Newton Regency affected by its decision; explain to them the process it followed in deciding to close the temporary funded beds they occupied at Newton Regency; and set out what steps it will take to ensure that it takes such commitments seriously, to consider all reasonable options to allow it to respect its commitments, and if it concludes that is not possible to provide adequate procedural safeguards to individuals affected by its actions.

R1.2. FHA develop a clear and transparent administrative procedure to use in decision making to ensure that it reviews its commitments (not including those made under contract) and considers how to follow them. If FHA decides that it is not possible to follow a commitment, FHA consult with people affected and ensure they can dispute the decision.

Adequacy of Notice

F2. FHA failed to provide adequate or reasonable notice to the residents of Newton Regency of its intention to close the temporary beds given the requirement FHA imposed to complete moves by September 30, 2009 or pay the full cost of a private bed at Newton Regency.

R2.1. When FHA decides to cease funding beds for reasons other than the health and safety of the residents and as a result individuals are required to move to another facility to continue receiving FHA funding, FHA provide at least 60 days notice to residents and families and make it clear that there is flexibility on final move dates to minimize moves and facilitate transfer to a facility of choice.

Knowledge of Temporary Nature of Placement

F2.1. FHA did not provide adequate information to people to allow them to make an informed decision to accept or reject a placement in a temporary funded bed.

R2.2. FHA inform people whether an offered placement is temporary or permanent and explain the difference between them. FHA develop a policy on offering temporary placements which acknowledge that if a temporary placement is declined because an individual or family member have concerns that the temporary status of the bed may result in extra risk due to a reasonable potential for additional moves that FHA will consider the placement to be not appropriate. The policy also specify that declining an offer in these circumstances would not change a person's position on the waitlist for a residential care placement.

Findings and Recommendations

Considering Risks to Health and Safety

F3. FHA's transition process was not flexible enough to allow for adequate consideration of individual circumstances. While FHA considered risks, it only did so within self-imposed constraints such as the requirement to close temporary funded beds at Newton Regency and relocate residents within a specified time frame.

R3. FHA's transition planning processes for moving residents to new facilities include sufficient flexibility to take individual circumstances into account and to minimize adverse effects from the transition.

Also see Recommendation 2.1

Planning Processes

F4. FHA did not plan adequately before making its May 2008 commitment to residents in temporary funded beds.

F4.1. FHA did not give adequate consideration to the commitment it made to residents and families at Newton Regency during its planning process.

R4. FHA always plan for the resources required at the time it makes a commitment.

Also see Recommendation 1.2

Compliance with Notice Requirements

F5. FHA acted improperly in not taking steps to enforce compliance with the notice requirements in the *Residential Care Regulation* and in recommending that a licensee not apply for an exemption. In doing so, FHA abrogated the rights of people who would have been affected by a decision of the MHO to grant an exemption and who could have appealed that decision to the Community Care and Assisted Living Appeal Board.

R5.1. FHA ensure that operators of licensed residential care facilities are informed of their obligations to provide notice to the medical health officer of a decision to cease operating or to substantially change the nature of the operations of a residential care facility.

FHA take any and all actions available to them under the *Community Care and Assisted Living Act* and contract to enforce compliance with the notice requirements in the *Residential Care Regulation.*

R5.2. FHA ensure that residents and families are informed of requests for exemptions to the notice requirements.

R5.3. FHA ensure that residents and families are informed of exemption decisions, including by verifying that a copy of the decision is posted in a prominent place in the facility, is provided to residents and families, and includes information on how to appeal the decision.

Authority Response

fraserhealth Better health. Best in health care.

December 23, 2011

Ms. Kim S. Carter
Ombudsperson
Province of British Columbia
947 Fort Street
PO Box 9039 Stn Prov Govt
Victoria, BC V8W 9A5

Dear Ms. Carter:

Re: Report on Fraser Health closure of Temporary Funded Beds at Newton Regency Care Home

Thank you for providing the Fraser Health Authority ("Fraser Health") with the opportunity to review and respond to the comprehensive findings and recommendations in your report concerning the closure of the temporary funded beds at the Newton Regency Care Home. We also appreciate your willingness to engage with us throughout the course of your investigation as we have endeavoured to make improvements to our policies and processes.

We at Fraser Health recognize that the very difficult decision we felt compelled to make in the midst of a significant budget challenge that required us to reduce costs by almost $160 million dollars in a single year nevertheless had a very personal and significant impact on the lives of the individual residents and their families who were affected by our decision. Regrettably, we cannot guarantee that we will never face a similar situation in future. To the extent, however, that we can mitigate the personal impact on residents and their families by adopting new processes and/or adjusting existing processes that will serve to enhance the transparency and fairness of our decision-making, we have done and will continue to do so.

After reviewing your thoughtful report, Fraser Health has substantially adopted all of its recommendations. We are confident that these recommendations and our implementation of them are in keeping with our vision "Better Health, Best in Health Care". We understand our response to your report on the closure of temporary funded beds at Newton Regency Care Home will be reflected in the section of your "Best of Care" report summarizing the Newton Regency report.

Our specific responses to your recommendations are set out below:
Ombudsperson Recommendation 1.1
FHA apologize to the residents and families at Newton Regency affected by its decision; explain to them the process it followed in deciding to close the temporary funded beds they occupied at

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Newton Regency; and set out what steps it will take to ensure that it takes such commitments seriously, to consider all reasonable options to allow it to respect its commitments, and if it concludes that is not possible to provide adequate procedural safeguards to individuals affected by its actions.

Fraser Health is prepared to accept this recommendation, subject to the caveat that we will make reasonable efforts using the information available to us to locate the affected residents and their families. In some cases, the resident is since deceased and the contact information on file for the resident's family may not be current, nor may the family's current contact information be easily discernible (e.g. as a result of a move out of province).

Ombudsperson Recommendation 1.2
FHA develop a clear and transparent administrative procedure to use in decision making to ensure that it reviews its commitments (not including those made under contract) and considers how to follow them. If FHA decides that it is not possible to follow a commitment, FHA consult with people affected and ensure they can dispute the decision.

Fraser Health accepts this recommendation as outlined in our comments in regard to Ombudsperson Recommendation 4, below. The planning process outlined in our comments will include a review of commitments made and how those commitments should influence our decision-making.

Fraser Health has also committed to improving our communication with residents and their families around our decision-making that affects them, part of which communication will now include information about the avenues by which a dispute of a decision may be pursued (e.g. by filing a complaint with the Fraser Health Patient Care Quality Office). In addition to being responsive to your recommendation, we believe this commitment is also in keeping with the Residents' Bill of Rights enacted by the Province in 2009.

Ombudsperson Recommendation 2.1
When FHA decides to cease funding beds for reasons other than the health and safety of the residents and as a result individuals are required to move to another facility to continue receiving FHA funding, FHA provide at least 60 days notice to residents and families and make it clear that there is flexibility on final move dates to minimize moves and facilitate transfer to a facility of choice.

Fraser Health accepts this recommendation, and since 2009 has been providing written information to individuals and their families outlining the temporary funded nature of the bed (where transfer to a temporary funded bed is contemplated). This template letter now indicates that the resident and/or family member will be notified in writing of any requirement to move from the temporary funded bed to a permanently funded bed, and of Fraser Health's commitment to work collaboratively with the resident and family to plan for the transfer, unless such transfer is required in order to protect the health and safety of the resident.

To date our experience in using this template letter to communicate with individuals and their families about temporary bed placements has been very positive. We have provided approximately 150 letters annually and have not had any refusals of offered placements on the basis of the temporary nature of the funding. To the extent that individuals and/or their family

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members have had questions in relation to a temporary funded bed, we have been able to make contact and address any such questions.

In terms of communication around flexibility on final move dates in circumstances where a temporary funded bed is to be closed, please see our comments in response to Ombudsperson Recommendation 3, below.

Ombudsperson Recommendation 2.2
FHA inform people whether an offered placement is temporary or permanent and explains the difference between them. FHA develop a policy on offering temporary placements which acknowledges that if a temporary placement is declined because an individual or family members have concerns that the temporary status of the bed may result in extra risk due to a reasonable potential for additional moves that FHA will consider the placement to be not appropriate. The policy also specify that declining an offer in these circumstances would not change a person's position on the waitlist for a residential care placement.

Fraser Health accepts this recommendation, subject to the following adjustments:

- Fraser Health has implemented a process whereby all individuals who are to be transferred to residential care are informed in writing if the bed to which transfer is proposed is a temporary funded bed.
- If an individual who is being offered a placement in a temporarily funded bed is legally competent, that individual's decision to accept a placement in a temporarily funded bed must be respected, even where there are objections on the part of the individual's family.
- If a temporarily funded bed is declined **by an individual residing in the community** (e.g. at home) because the individual or, in appropriate circumstances, a family member, has concerns that the temporary status of the funding may result in extra risk due to a reasonable potential for additional moves, the placement in the temporary funded bed may be declined with no resulting change to the individual's position on the waitlist for a residential care placement in a permanently funded bed.
  - Subject to availability, Fraser Health will offer the individual a permanently funded bed at another facility that offers an appropriate level of care, although such facility may be located outside the individual's preferred community. The individual may then indicate their preference for transfer to a preferred geographic region, or to a preferred facility. A transfer to a preferred geographic region will be prioritized; however, may require a period of wait to ensure a permanently funded bed is available.
- For **an individual who is residing in acute care** (e.g. a hospital ward) and who no longer clinically requires an acute level of care, for capacity and budgetary reasons that are publicly well-known, Fraser Health cannot simply permit the individual to decline a residential care placement and opt to remain in acute care until his/her desired placement becomes available. Fraser Health does, however, make the following options available to such an individual (or family) who has concerns that the temporary status of the funding may result in extra risk due to a reasonable potential for additional moves:

  - Subject to availability, Fraser Health will offer the individual a permanently funded bed at another facility that offers an appropriate level of care, although such facility may be located outside the individual's preferred community. The individual may

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then indicate their preference for transfer to a preferred geographic region, or to a preferred facility. A transfer to a preferred geographic region will be prioritized; however, may require a period of wait to ensure a permanently funded bed is available.

- Fraser Health will offer a "Home is Best" opportunity, where the individual may chose to return home (from acute care) and await transfer to residential care, provided that Home Health services are able to meet the care needs of the individual in the community.

Ombudsperson Recommendation 3
FHA's transition planning process for moving residents to new facilities include sufficient flexibility to take individual circumstances into account and to minimize adverse effects from the transition.

Fraser Health accepts this recommendation, with the caveat that it will not always be possible to accommodate each resident's individual circumstances (e.g. if the term of a funding contract with a health service provider is at an end, and the health service provider declines to extend the contract on a limited basis to account for a delayed transfer date). Fraser Health is, however, committed to ensuring that the planning process for closing temporarily and/or permanently funded beds will include communication outlining the flexibility that is available within the planning timeframe. Fraser Health will share the parameters of the flexibilities with residents, families, transition team members and the operators of facilities with the goal of facilitating transition planning where everyone involved has the most accurate information, including flexibility and/or limitations on the flexibility of timelines and options.

Ombudsperson Recommendation 4
FHA always plan for the resources required at the time it makes a commitment.

Fraser Health accepts this recommendation. Fraser Health has long been developing and, since 2010, implementing a well-researched, evidence-based process that focuses on integrated and continuous planning, execution and reporting that is appropriate for complex organizations. We will continue to make improvements to this process based on experience, including planning around commitments and the resourcing of such commitments.

Ombudsperson Recommendation 5.1
FHA ensure that operators of licensed residential care facilities are informed of their obligations to provide notice to the Medical Health Officer of a decision to cease operating or to substantially change the nature of operations of a residential care facility.
FHA take any and all actions available to them under the Community Care and Assisted Living Act and contract to enforce compliance with the notice requirements in the Residential Care Regulation.

Fraser Health accepts and has implemented the recommendation that we inform licensees of their notice obligations under section 9 of the Residential Care Regulation (the "Regulation") issued pursuant to the Community Care and Assisted Living Act (the "Act"). We have committed to the constructive use of education, dialogue and facilitation to encourage licensees to act in accordance with the spirit and intent, as well as the letter, of the Act in order to better respect and promote the health, safety and dignity of persons in care. Fraser Health is also prepared to

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commit to exercise the appropriate legal remedies available to us, both as a funder and as a regulator, in the event of non-compliance by the licensee. We continue to question, however, whether our imposing a condition on the license of a non-compliant licensee that appropriate notice be provided will have the desired effect. Ultimately the result of a licensee's failure to comply with such a condition is suspension or termination of the license by Fraser Health, or the appointment of an administrator to operate a facility in circumstances where the health and safety of persons in care are at immediate risk. The licensee may be unconcerned with this result if the licensee's intention is to close the facility or convert it to use for which a license under the Act is not required.

In addition, we note that the rationale for including the notice requirement in the Regulation is to provide the licensee and/or funder with the time necessary to develop and implement a transition plan for the orderly closure or transition to alternate use of the licensed facility. In keeping with respect for and promotion of the health, safety, dignity and rights of residents, the notice requirement provides the resident and/or decision makers with the opportunity to be informed of and provide input with respect to the process. Given, however, that residents must be transferred to other facilities as beds become available, particularly when a bed becomes available at the resident's preferred facility, and given that employee retention becomes an issue once an intended closure becomes public knowledge, it is seldom if ever possible for a licensee to continue operating right up until the expiry of the 365-day notice period. Once a licensee, working with the funder where applicable, develops and implements an overall transition plan and individual health and safety plans, and once all residents have been safely transferred to other facilities, there is no reason for the licensed facility to remain open until the notice period expires.

Ombudsperson Recommendation 5.2
FHA ensure that residents and families are informed of requests for exemptions to the notice requirements.

Fraser Health accepts this recommendation. On receiving an application from a licensee for an exemption from the 365-day notice requirement established by section 9 of the Regulation, a Fraser Health Medical Health Officer or his/her delegate specifically recommends that the licensee immediately inform residents and their families of the existence of the application and its content. Our experience is that licensees generally follow such recommendations; however, going forward Fraser Health will be implementing a process whereby Licensing Officers will verify that such recommendations have been followed.

Ombudsperson Recommendation 5.3
FHA ensure that residents and families are informed of exemption decisions including by verifying that a copy of the decision is posted in a prominent place in the facility, is provided to residents and families and includes information on how to appeal the decision.

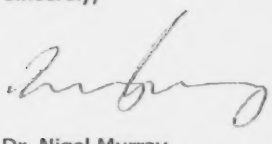
Fraser Health accepts this recommendation and has implemented it by ensuring that our Licensing Officers specifically advise a licensee in a Notice of Decision in response to an exemption request that the licensee has a responsibility to ensure that all residents and families are notified of an exemption approval and of their right to appeal that approval. Where a Licensing Officer has reason to believe that a licensee will not comply voluntarily with the

Authority Response

direction to notify, there is an option to impose on the licensee a specific requirement to notify as a condition of approval of the exemption request.

Once again, thank you for the opportunity to provide this response to your findings and recommendations.

Sincerely,



Dr. Nigel Murray
President and Chief Executive Officer

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Cc: Barbara Korabek, Vice President, Clinical Operations
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